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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th April, 1953

S.R.O. 782.—WHEREAS the election of Raja Man Singh, as a member of the Legislative Assembly of the State of Rajasthan, from Kumher constituency, has been called in question by an election petition (election petition No. 207 of 1952 before Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Harish Chandra, Village Induka, Tehsil and District Bharatpur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION No. 6 OF 1952

Pt. Harish Chandra—*Petitioner*

Versus

Raja Man Singh & others—*Respondents.*

PRESENT:

Mr. Justice K. K. Sharma—*Chairman.*

Mr. A. N. Kaul—*Member.*

Mr. P. L. Shome—*Member.*

Mr. Brij Sunder Sharma for the petitioner.

Mr. Sharma Ramesh Chandra for respondent No. 1.

ORDER

Dated the 24th March, 1953

By this Election Petition Pt. Harish Chandra of village Induka, Kumher Constituency, in Bharatpur district, challenges the election of Raja Man Singh, respondent No. 1 (hereinafter to be referred to as the contesting respondent) on the ground that the nomination paper of the petitioner was improperly rejected by the

Returning Officer, and that the nomination paper of the contesting respondent was improperly accepted, and that the rejection of the petitioner's nomination paper and acceptance of the nomination paper of the contesting respondent materially affected the result of the election.

At the last General Elections in January, 1952, the petitioner filed his nomination paper before the Returning Officer, Bharatpur, to stand as a candidate to the Rajasthan Legislative Assembly from Kumher constituency on behalf of Kisan Sabha party. The contesting respondent also filed his nomination paper for the same seat as an independent candidate. Respondent No. 2, Shri Veerendra Singh, and respondent No. 4, Shri Jeewa Ram, both filed their nomination papers for the same seat on behalf of the Congress party. Thakur Desraj, respondent No. 3, also filed his nomination paper for the said seat on behalf of Kisan Sabha party. Respondent No. 5, Shri Hoti Lal, says that he filed his nomination paper for the same seat on behalf of Kisan Sabha, but only as a covering candidate for the contesting respondent. Thus, there were six nomination papers in all, out of which the nomination paper of the petitioner was rejected on the ground that he was a licence holder of sugar from the Government, and, was, therefore, disqualified under section 7 (d) of the Representation of the People Act (hereinafter to be referred to as the Act). The nomination papers of the remaining five candidates were accepted, but later on Shri Jeewa Ram, respondent No. 4, and Shri Hoti Lal, respondent No. 5, withdrew from the contest, and only the contesting respondent and Shri Veerendra Singh, respondent No. 2, and Thakur Desraj, respondent No. 3, remained in the field to contest the election. As a result of the poll, the contesting respondent came out successful, and the other two candidates were defeated. The petitioner filed the present petition under section 81 of the Act, and it has been referred to this Tribunal for decision.

The grounds on which the petitioner challenges the election of the contesting respondent are as follows:—

1. A licence-holder of sugar is neither a holder of office of profit under the Government of India or of Rajasthan, nor is he disqualified under any other law from standing as a candidate for the membership of the State Assembly.

2. The contesting respondent is the holder of an office of profit under the Government of Rajasthan, as he receives Rs. 2,200 per month as allowance along with free residential palace from the said Government, and under the Bharatpur State Khanpan Rules, 1934, the State of Rajasthan has a right to exact service from the contesting respondent from time to time.

3. The result of election has been materially affected by the improper rejection of the petitioner's nomination paper as well as by the improper acceptance of the contesting respondent's nomination paper.

In response to the notices issued by this Tribunal, the contesting respondent and the respondent No. 5 only put in their written statements. Other respondents, though served, did not file any written statement. Respondents Nos. 2 and 3 did not appear in court, and the case proceeded *ex parte* against them. Respondent No. 4, Shri Jeewa Ram, appeared before the Tribunal on the 10th of December, 1952, but said that he did not want to file any written statement. He too did not take any further part in the case. In his written statement, respondent No. 5 has simply supported the contesting respondent and has opposed the petition. The contesting respondent is, therefore, the only respondent who seriously contested the petition. His objections to the petition are:—

1. The nomination paper of the petitioner was properly rejected, as he himself admitted before the Returning Officer that he was a licensed dealer of sugar of the Rajasthan Government, Supply Department, and was getting commission for the services rendered by him. He was disqualified under the Constitution to be a member of the Rajasthan Legislative Assembly, as a sugar dealer appointed by the Government of Rajasthan has an interest in the contract for the performance of services undertaken by the Government within the meaning of section 7 (d) of the Act.

2. The contesting respondent does not hold any office of profit under the Rajasthan Government. The Khanpan Rules of the Bharatpur State have neither any force of law, nor are they applicable to the contesting respondent, and the Rajasthan Government has no right to exact any service from him, nor is he liable to render any service to any

Government. The monthly allowance which he gets is only a maintenance allowance, which he is entitled to get on account of his birth in the Bharatpur Raj family.

3. The petitioner and Th. Desraj, respondent No. 3, were of the same group, and Th. Desraj was to stand for the election while the petitioner was to withdraw in his favour, in case the nomination papers of both were accepted. The petitioner was, therefore, only a covering candidate for Th. Desraj, and he canvassed with full force and exercised his influence throughout the election for Th. Desraj.

4. The rejection of the nomination paper of the petitioner did not materially affect the result of the election, as out of the total votes polled, that is 32,690, he polled, 24,752 votes, whereas the other two candidates, who contested the election got only 5,845 and 2,093 respectively.

On a perusal of the petition and the two written statements, as well as the statements of the petitioner and the counsel for the contesting respondent recorded under Order X, Rule 1, of the Code of Civil Procedure, the following issues were framed:—

1. Whether the petitioner was wrongly and improperly held to be a licence-holder of sugar by the Returning Officer?
2. Whether, if he is a licence-holder of sugar, his nomination paper was improperly rejected by the Returning Officer?
3. Whether the result of the election has been materially affected by the rejection of the petitioner's nomination paper?
4. Whether the respondent No. 1 is a holder of an office of profit within the meaning of Article 191 of the Constitution of India by virtue of his getting a monthly allowance from the Government, and if so, whether his nomination paper was improperly accepted?
5. If the answer to issue No. 4 is in the affirmative, did the acceptance of respondent No. 1's nomination paper materially affect the result of election?
6. Whether it is open to the petitioner to challenge the respondent No. 1's election on the ground that he holds an office of profit, when he did not take this ground before the Returning Officer?

At the time of hearing, the learned counsel for the contesting respondent withdrew his objection which gave rise to issue No. 6. This issue is, therefore, decided against the contesting respondent and in favour of the petitioner.

It remains now to decide only the first five issues.

Issue No. 1.—The petition does not say in his petition that he was not a licence-holder of sugar. Rather in para. 6 of his petition he says that a licence-holder for the purposes of selling sugar does not hold an office of profit under the Government, which implies that he admits being a licence-holder, but contests that a licence-holder for sugar is not a holder of office of profit under the Government. In his statement under Order X, Rule 1, however, he took up the position that he was not a licenced dealer, and did not get any commission from the Government, but that the commission was realised from the consumers. It has, however, been proved by very satisfactory oral and documentary evidence that the petitioner was a licence-holder for distributing sugar to ration-card holders. There is a petition of the petitioner dated 18th March, 1950, Ex. R.-1 (1), wherein he prayed that he be allotted a sugar retail dealer's shop, which had fallen vacant, and that he be allowed to deposit the licence fee and security money. After certain reports, an order was made by the District Supply Officer on the 21st of March, 1950, that the petitioner be given a licence for selling sugar, and he should deposit the security money. This order is Ex. R/1 (4). In pursuance of this order the petitioner deposited Rs. 200/- as security money, and executed a security deed, Ex. R-1 (2), wherein he has said that he had been duly appointed by the District Supply Officer, Bharatpur, as sugar retail dealer for villages of Tehsil Bharatpur zone and he would sell sugar at the rates fixed by the Rajasthan Government, and would render a proper and faithful account of all such sales every month to the Tehsildar, Bharatpur. He also undertook certain duties by this security deed, and agreed that the security might be forfeited in whole or in such portion as the Commissioner might deem reasonable in case of any breach of the orders of the authorities. Thus, it is quite clear that the petitioner took a licence from the Government for supplying sugar, and the answer to this issue must be in the affirmative. This issue is decided against the petitioner and in favour of the contesting respondent.

Issue No. 2.—This issue raises an important question of law. A candidate can be disqualified from the membership of a State Legislature under Article 191 of the Constitution of India on the following grounds:—

(a) If he holds any office of profit under the Government of India or the Government of any State, specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder:

(b) If he is of unsound mind and stands so declared by a competent Court:

(c) If he is an undischarged insolvent:

(d) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State:

(e) if he is so disqualified by or under any law made by Parliament.

Learned counsel for the contesting respondent relied upon clauses (a) and (e) of Article 191 of the Constitution to show that the petitioner was disqualified for membership. He argued that as a licence-holder entitled to commission, the petitioner held an office of profit. His next argument is that under section 7(d) of the Act as well, which was passed by the Parliament, the petitioner was disqualified, because he was a licence-holder of sugar from the Government of Rajasthan, and consequently had an interest in a contract for the performance of services undertaken by the Government of Rajasthan. So far as the first contention is concerned, we have no hesitation in repelling it. A licence-holder for a particular purpose from the Government cannot, in our opinion, be said to be a holder of office. Of course, he derives some profit from his being a licence holder, as he receives commission, but the question is not only that he derives profit, but he must be a holder of office as well. A licence-holder, such as the petitioner is, in our opinion, does not hold any office. This brings us to the consideration of the second contention of the learned counsel for the contesting respondent.

Two facts have to be established in order to show that the petitioner was disqualified under section 7(d) of the Act namely (1) the Rajasthan Government, which was the appropriate Government within the meaning of section 2(b) of the Act, had undertaken the performance of any service in relation to the supply or distribution of sugar; (2) the petitioner had a share or interest in a contract for the performance of such services. We take up the second point first.

It was argued on behalf of the contesting respondent that the petitioner being a licence-holder, was in a contract with the Government of Rajasthan to distribute sugar to the ration card holders. Learned Counsel for the petitioner contended that by holding a licence for supplying sugar to ration-card holders the petitioner did not enter into any contract with the Government of Rajasthan. The licence, which had been given to him, did not amount to a contract. The learned counsel argued that under the Sugar and Gur Control Order, 1950, made by the Government of India in the exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946, the Central Government had power, from time to time, by order to allot quota of sugar or gur to any specified State or area and to issue directions to any producer or dealer to supply sugar or gur of such type or grade, in such quantities to such areas or markets or to such persons or organisations and at such price as may be specified in the order. Reference was made to section 7 (i) and (ii). The learned counsel proceeded that the Order was made to regulate movement of sugar and to ensure that it was properly distributed at reasonable price. Under these powers of regulation the petitioner was given the licence but there was no contract with him for the performance of any service undertaken by the Government. Reliance was placed upon a recent decision of the Election Tribunal, Patiala in the case of Shri Gianchand *Vs.* Shri Siri Ram Bansal and others (Election Petition No. 4 of 1952), published in the *Gazette of India*, Extraordinary, Part I Section 1, No. 485, dated December 6, 1952, page 2539. Learned counsel for the contesting respondent relied upon a decision of the Election Tribunal, Vellore, in the case of Dr. Kannabiran *Vs.* Sri A. J. Arunachalam and others (Election Petition No. 109 of 1952), published in the *Gazette of India*, Extraordinary, Part II, Section 3, No. 168, dated December 17, 1952, page 961.

We have considered the arguments of both the learned counsel. To our mind the licence which was given to the petitioner cannot be said to be a contract for the performance of services undertaken by the Rajasthan Government. In a contract there should be a mutuality between the parties. In the present case there was no such mutuality. The Government had given a licence to the petitioner to distribute

sugar to ration-card holders according to law, and in order to see that he properly distributed sugar, certain undertakings were taken from him, which find place in the security bond, Ex. R. 1/2. The Government of Rajasthan undertook no duty towards the petitioner. In 17 Ruling Case Law, page 474, article 2, a licence has been defined as follows:—

> "A licence is in the nature of a special privilege, and not a right common to all; and it is often required as a condition precedent to the right to carry on business or to hold certain classes of property within the jurisdiction and it is not a property right, or a contract."

Again at page 476, it has been stated that,

> "A licence is not a contract between the State and the licensee and is not property in any constitutional sense. Nor can it be said that the grant of a license to conduct a business and the lease of municipal property in consideration of the payment of a rent is a contract to secure the licensee against unlicensed competition."

Further on, it is stated that,

> "Following the general principle that a license is not a contract, it is clear that it does not in itself create any vested right, or permanent right, and that free latitude is reserved by the legislature to impose new or additional burden on the licensee or to alter the licence or to revoke or annul it."

In the case of Shri Gian Chand *Vs.* Shri Siri Ram Bansal and others, referred to above, the petitioner was a grain depot licensee under an order issued under the Essential Supplies (Temporary Powers) Act, 1946. It was argued on behalf of the respondent in that case that under the scheme of rationing and procurement of foodgrains in PEPSU the holder of the licence for the foodgrains depot was under a contract with the Government to perform the services of supplying and distributing grain on behalf of the Government. This contention was repelled and it was held that the holder of a grain depot was under no contract with the Government to perform the service of supplying grain to consumers. It was observed that the position was that no body could sell foodgrains without a licence and the depot holder was merely given a licence or a permit by the Government to sell foodgrains. There was no question of any contract between him and the Government for the supply of foodgrains to anyone on Government's behalf. We are in agreement with the view of the Patiala Tribunal and do not find any distinction between the present case and that before the learned tribunal at Patiala excepting that in the present case the licence is for the distribution of sugar whereas in the said case the licence was for foodgrains, which, in our opinion, is not material.

In the case decided by the Vellore Tribunal, cited by the learned counsel for the contesting respondent the facts were different from the facts of the present case. There the petitioner, who was a State nominee of yarn, was not held to be a licencee only, but it was held that he was in contract with the Government of the State of Madras for the performance of services undertaken by the State Government. It was found that the document, which was relied upon as a contract between the Government of Madras and the State nominee was described as an agreement and it was recited therein that it was made between His Excellency the Governor of Madras on the one part and Shri A. J. Arunachala Mudaliar (the first respondent) on the other part. There was a mutuality in the agreement inasmuch as while the Government laid down certain duties on the nominee, it also undertook upon itself certain duties. It was provided in the agreement that it could be cancelled on a certain notice by either of the parties. In the special circumstances of that case it was held that the deed evidenced a contract between the State of Madras on the one hand and the respondent nominee on the other. In the present case the security bond, Ex. R. 1/2, which has been mainly relied upon in order to show that there was a contractual relationship between the State of Rajasthan on the one part and the petitioner on the other is a unilateral document executed by the petitioner alone. It does not mention that any contract had been made between His Highness the Rajpramukh of Rajasthan and the petitioner, nor does it purport to be executed on behalf of His Highness the Rajpramukh of Rajasthan. The Rajasthan State had no duty under the security bond and it was only the petitioner who had undertaken certain obligations. The petitioner cannot, therefore, be said to have acquired any interest or share in a contract for the performance of any services undertaken by the Government of Rajasthan. It may be argued why the legislature should not debar a licence holder for standing as a candidate to the

legislature while it had debarred a contractor. It may be contended that the principle underlying the imposition of disqualification on a contractor is that he may be amenable to Government influence and may not, therefore, act freely and independently inside the legislature. The same considerations may prevail in the case of a licence-holder rather with greater force. Our plain duty however, is to interpret the law, as it stands, and if it disqualifies only a contractor and not a licencee we cannot add the words licencee if the legislature either deliberately or even by oversight omitted these words while framing section 7(d) of the Act. Suffice it to say that section 7(d) imposes a disqualification on a contractor and not on a licencee. We cannot, therefore, hold that a licencee, as the petitioner is, was disqualified to stand as a Candidate to Rajasthan Legislative Assembly simply because the same reasons may, with greater force, make it desirable to disqualify a licence-holder as a contractor.

Our finding, therefore, is that the petitioner is not hit by the provisions of section 7(d) of the Act, and therefore his nomination paper was improperly rejected. In view of our finding that there was no contract of the petitioner with the Rajasthan Government it is not necessary for us to decide whether the Rajasthan Government had undertaken the performance of the services of supplying or distributing sugar to consumers, within the meaning of section 7(d).

Issue No. 3.—Having held that the nomination paper of the petitioner was improperly rejected, we have got to find whether the result of election has been materially affected by this improper rejection. Under section 100(1)(c) of the Act, the Tribunal shall declare the election to be wholly void, in case it is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination. It was argued by the learned counsel for the petitioner that once it is held that the nomination paper was improperly rejected, it would have to be held that the result of the election was materially affected, as by the improper rejection of the petitioner's nomination paper, the whole electorate was deprived of having a chance to vote for the petitioner. It was argued that there was overwhelming authority in favour of this proposition. There is no doubt that both under the present Act as well as the Legislative Assembly Electoral Rules of various provinces under the Government of India Act, 1935, which also made a similar provision, as has been made in section 100(1)(c) of the Act, it has been held that presumption in case of improper rejection of a nomination paper would be that the result of the election has been materially affected. There are a large number of cases on this point under the old Electoral Rules, but it is not necessary to refer to all of them. It may be said by way of example, however, that in the following cases reported in Volume 1 of Doabia's Election Cases (1935 to 1950) *viz.*:—

1. Ferozpore East (Sikh) Rural Constituency, Sardar Basant Singh *Vs.* Sardar Rattan Singh Page 80,
2. Punjab Anglo-Indian Constituency (Case No. 1) Mr. E. Few *Vs.* Mr. C. E. Gibbon, Page 247,
3. Punjab Anglo-Indian Constituency (Case No. 2) Mr. S. R. Lewis *Vs.* Mr. C. E. Gibbon, Page 259, and
4. Amritsar Central (Sikh) Constituency Sardarni Prakash Kaur *Vs.* Rai Bahadur Basakha Singh, Page 332,

it was held that the improper rejection of a candidate's nomination paper raises a presumption that the result of the election was materially affected, and this has to be rebutted by a very strong and convincing evidence. A similar view was held in

1. Multan Division Towns (Mohammadan) Constituency, (Case No. 2) Syed Zain-ul-Abdin Shah *v.* Khan Sahib Sheikh Muhammad Amin, reported at Page 302,
2. Moradabad District (North West) Mohammadan Rural Constituency, Bashir Ahmed *v.* Akhtar Hussain Khan, reported at Page 341,
3. Basti District (North East) General Rural Constituency, Kalapraj *v.* Pt. Bishambhar Nath Tripathi, reported at Page 355, and
4. Sitapur District (East) General Rural Constituency, Babu Jagan Nath Prasad *v.* Raja Maheshwar Dayal Seth, reported at Page 217,

of Volume II of Doabia's Indian Election Cases (1935 to 1950). It may be mentioned that in all these cases evidence was gone into, but it was considered to be insufficient to rebut the presumption raised in favour of the petitioner by the improper rejection of the nomination paper. Out of the cases cited above, in the

Ferozpore East (Sikh) Rural Constituency case (Sardar Basant Singh v. Sardar Rattan Singh) there was no evidence to rebut the presumption. In the two Punjab Anglo-Indian Constituency cases, only two candidates filed nomination papers, out of which one was rejected, and the other candidate remained the sole candidate, and was returned unopposed without any polling. In the Amritsar Central (Sikh) Constituency case, the competition between the successful candidate and the defeated one was very close, and the defeated candidate deposed that he would have withdrawn, if the petitioner's nomination paper had been accepted. In the Multan Division Towns (Mohammadan) Constituency, there was not an iota of evidence to rebut the presumption. In the Moradabad District (North West) Mohammadan Rural Constituency, the evidence of the petitioner showed that he had been touring the constituency which contained a large number of voters of his *biradari*. In the Basti District (North East) General Rural Constituency case the petitioner was a Congress candidate, and it was found that in three other General Rural Constituencies of that district, Congress candidates had succeeded. In Sitapur District (East) General Rural Constituency case, there was no polling, as the respondent was the only candidate left in the field after the rejection of the petitioner's nomination paper. The circumstances of those cases were taken into consideration by the learned Commissioners who decided them, and it was held that the presumption was not rebutted. In none of these cases the view was taken that the presumption was altogether irrebuttable, and the relevant rule should be read as if the words "the result of the election has been materially affected" had no relation to the word "rejection".

Now coming to the cases under the Act, we find that excepting the case decided by the Lucknow Tribunal, *viz.*, Braj Naresh Singh *vs.* Hon'ble Shri Thakur Hukum Singh and others, (election petition No. 208 of 1952), reported in the Gazette of India, Extraordinary, Part II—Section 3, No. 174, dated December 20th 1952, page 1029, in all other cases the view taken was that the presumption in favour of the result of election having been materially affected was strong but was rebuttable. In the Lucknow case, however, it was held that the presumption was incapable of rebuttal, and any attempt to rebut it would only lead to nothing but speculation. The learned members of the Tribunal read section 100(1)(c) of the Act as if the words "the result of the election has been materially affected" had no relation to the words "rejection" of any nomination paper. We have very carefully read the wordings of section 100(1)(c). It cannot be disputed that on a pure grammatical and literal construction of this provision of law, the words "the result of the election has been materially affected" have to be read as much with the words "improper acceptance" as with the words "improper rejection", and cannot be dissociated from the word "rejection". The learned Tribunal at Lucknow itself observes at page 1032 that

> "The plain meaning of this clause is that before an improper acceptance or rejection of any nomination can be a ground for setting aside an election, the Tribunal must form an opinion that in fact the result of the election has thereby been materially affected and not merely that it is likely to have been materially affected. We see the force of this argument and the loose wording of the clause, which is capable of interpretation that it must be proved that if the nomination had not been improperly accepted or improperly rejected, the candidate who was declared successful would not have been elected."

It was, however, found towards the end that it was impossible to adduce any evidence to show that the result of the election was not materially affected by the improper rejection of the nomination paper, and, therefore, it was held that on the principle of *lex non cogit ad impossiblia* (the law does not compel a man to do that which he cannot possibly perform) the clause should be so read as if the words "the result of the election has been materially affected" were superfluous in connection with the word "rejection", and proposed an amendment of the said clause by splitting up into the following two clauses was suggested

> "(c) that any nomination has been improperly rejected,
>
> (d) that the result of the election is likely to have been materially affected by an improper acceptance of any nomination."

It is true that if the intention of the Legislature was that the improper rejection of a nomination paper by itself rendered the election void, the clause should have been split into two parts as suggested by the Lucknow Tribunal. Even if that is not the intention, it would be very advisable, if this clause is split into two clauses as suggested by that Tribunal, because there can be no doubt that it is very difficult to prove that the improper rejection of a nomination paper did not materially

affect the result of the election, as the electorate had no chance in such a case to vote for the rejected candidate. But so long as the clause is worded as it is at present, it is the duty of the Tribunal to give full effect to all the words that find place in it. It is a cardinal principle of interpretation of statutes that the phrases and sentences are to be construed according to the rules of grammer, (Maxwell on the Interpretation of Statutes, 8th Edition, page 2). Again at page 6 the learned author says, "When the words admit of but one meaning, a Court is not at liberty to speculate on the intention of the Legislature, and to construe them according to its own notions of what ought to have been enacted". On page 7, he says, "The Court could not assume a mistake in an Act of Parliament", and on page 12 he says, "It is but a corollary to the general rule in question, that nothing is to be added to or to be taken from a statute, unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do". On page 177, he says that a sense of the possible injustice of an interpretation ought not to induce Judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations. It cannot be denied that the wordings of section 100(1)(c) admit of only one meaning. There is, therefore, no scope for bringing any extrinsic considerations to our aid. This is why some of the recent decisions of the Tribunals under the Act are to the effect that the words "the result of the election has been materially affected" are not to be considered as superfluous in the context of the word "rejection". In the case of Shri Prem Nath v. Shri Ram Kishan (Election Petition No. 232 of 1952), published in the Gazette of India, Extraordinary, Part II—Section 3, No. 173, dated December 19, 1952, page 1017, it is observed in the majority decision of the Chairman and one of the two Members of the Jullundur Tribunal that

> "Every word in a Staute must be given its natural meaning, as far as it is possible and superfluity cannot generally be attributed to Legislative enactments. It seems to us therefore that a Tribunal can only declare an election void if in the opinion of the Tribunal the result of the election has been materially affected in consequence of an improper rejection of nomination."

Even the third Member, Mr. M. S. Pannun, who took a different view of the evidence produced in rebuttal has not taken the view that these words are superfluous in the context of the word "rejection". The Election Tribunal, Secunderabad, Deccan, in the case of Vijaya Mohan Reddy vs. Paga Pulla Reddy and others (Election Petition No. 1 of 1952), published in the Gazette of India, Extraordinary, Part II—Section 3, No. 8, dated January 8, 1953, page 45, have observed:

> "We cannot and do not wish to lay down as an invariable rule, admitting of no exception that whenever a nomination paper is improperly rejected the election should be wholly set aside and it should be presumed that this event has materially affected its result. This will be contrary to what appears to be the intention of the legislature as it appears in section 100 (c). There would have been no need for providing that the tribunal should form its opinion regarding this question."

In the case of Chander Nath v. Kunwar Jaswantsingh and others (Election petition No. 226 of 1952), published in the Rajasthan Gazette, Extraordinary, Vol. 4, No. 183, dated February 1, 1953, page 983, the Election Tribunal, Rajasthan, Bikaner, on a consideration of the judgment of the Lucknow Tribunal have dissented from the view of that Tribunal. They observe on page 992 as follows:—

> "It follows from the trend of the judgments of the various Tribunals, which we have had the advantage to go through very carefully, that it becomes a question of fact in each case depending upon the evidence led by the parties, whether this presumption has been rebutted or not. To hold otherwise would be to replace the provisions of section 100 (1) (c) of the Representation of the People Act 1951, with our own which the Legislature never intended. A contrary view appears to have been taken by the Lucknow Tribunal in the case of Brijnaresh Singh v. Hon'ble Thakur Hukum Singh and others.....which has come to a conclusion that in the case of improper rejection of a nomination paper, it is impossible to prove that the result of the election has or has not been materially affected. It has further held that the condition precedent to the

declaration of the election as void, mentioned in clause (c) of sub-section (1) of section 100 of the Representation of the People Act, 1951, is not only superfluous, but is incapable of fulfilment, and as such an improper rejection of a nomination paper wholly avoids the election. In view of the interpretation put by this Tribunal, it has been suggested that the Legislature should take an early opportunity to remove all doubts by amending section 100 (1) (c) of the Act. With all due respect, we are unable to agree with this view as the words of section 100 (1) (c) do not go so far as to convey this idea."

We are in complete agreement with the views of the Bikaner Tribunal on this point. As a matter of fact, on a plain reading of section 100 (1) (c), it is difficult to make any difference between the case of acceptance and that of rejection of a nomination paper. If it is necessary to prove in the case of improper acceptance that the result of the election was materially affected, it is equally necessary to prove it in the case of an improper rejection. However, there is a consensus of opinion of the various Tribunals and Election Commissions right from the year 1921 upto the present day that the improper rejection of a nomination paper raises an initial presumption that the result of the election has been materially affected. We would, on the principle of *stare decisis*, not like to go against this view. We are therefore, prepared to go so far that there is such as initial presumption, and it requires strong and convincing evidence to rebut it, but no further.

The learned members of the Lucknow Tribunal in the case of Brijnaresh Singh v. Hon'ble Thakur Hukum Singh seem to be of opinion that it is the result of loose drafting that the words "the result of the election has been materially affected" have been used in the context of the words "rejection" also, and probably it is an accidental mistake on the part of the Legislature. Apart from the fact that the Tribunal cannot assume a mistake in an Act of the Legislature, there are grounds for believing that it is not due to any mistake or loose drafting that the said words have been used in connection with the acceptance as well as the rejection of a nomination paper. The Legislature must have been fully conscious of the various decisions of the Election Commissioners under the old law that it had been consistently held that it was very difficult to prove in the case of improper rejection that the result of the election had not been materially affected. In spite of this, they thought it proper to retain the words in question in the context of "rejection" as well. Moreover, it appears to be the anxiety of the Legislature that an election should not be lightly set aside on any technical grounds. The setting aside of an election is a very serious matter, as a good deal of time and money, which is spent, is spent in vain. The Legislature therefore thought that unless by any technical irregularity or illegality the result of the election has been materially affected, the election should not be declared to be void. This appears from the fact that the words "materially affected" do not occur only in section 100 (1) (c), but also in clauses (a) and (c) of sub-section (2) of the said section. We are, therefore, of opinion that simply the difficulty of proving that the election has not been materially affected by the improper rejection of a nomination paper should be no reason to wipe off the clear words which occur in the clause in question.

Before we discuss the evidence in this case on this point, we may mention that we are conscious of the fact that with the exception of the two recent judgments—one of Jullundur Tribunal and the other of Bikaner Tribunal—referred to above, in all other cases the evidence in rebuttal was found to be insufficient; but that is a different matter, because every case depends upon its own facts.

Coming to the evidence in the case, we may say at the outset that the contesting respondent, although an interested party, by his demeanour in the witness box, impressed us to be a perfectly honest and straightforward witness. He did not make any statement before the Tribunal in his favour unless he was sure of its truth. He felt quite at ease while answering questions in examination-in-chief as well as cross-examination, and his manner was not that of an uneasy and fidgety witness who is conscious that he is not giving out the truth. We have, therefore, felt it safe to act upon his solitary statement alone in one or two matters where it was uncontroverted, although rebuttal was within the reach of the petitioner.

From the evidence of Shri Ratan Singh, R.1/W.4, who was a Secretary of the Rajasthan Kisan Sabha and a member of the Executive Committee of Bharatpur Kisan Sabha at the time of the General Elections, it comes out that at first

Thakur Desraj and the petitioner stood as candidates for the Rajasthan State Assembly from Kumher Constituency on behalf of Kisan Sabha. The contesting respondent had orginally stood as on independent candidate, but at the request of some Kisan Sabha leaders, including the said Ratan Singh, he had consented to become a candidate of Kisan Sabha some time after the scrutiny was over. It also comes out from his evidence that it was settled by Kisan Sabha, Bharatpur, that if the contesting respondent did not adopt the symbol of Kisan Sabha, out of Thakur Desraj and the petitioner who would file nomination papers on behalf of Kisan Sabha, only Thakur Desraj would contest the election. It also comes out from his evidence that there is a majority of Jat voters in Kumher Constituency. It also comes out from his evidence that even after the contesting respondent had been adopted as an official candidate of Kisan Sabha, the Kisan Sabha workers of Kumher Constituency worked for Thakur Desraj. It further comes out from his evidence that there was greater effort put in Kumher Constituency for Thakur Desraj than in Bharatpur Constituency from which also he had stood, because majority of voters from Kumher Constituency were Jats. He has also explicitly said that it had been decided by Kisan Sabha that other candidates except Th. Desraj nominated on behalf of Kisan Sabha from Kumher Constituency would withdraw their nomination in case the nomination paper of Th. Desraj was accepted. He has clearly deposed that it was wrong to say that if the nomination paper of the petitioner had been accepted from Kumher Constituency, Th. Desraj would not have contested from the Constituency. This witness is an important member of the Bharatpur Kisan Sabha and Secretary of Rajasthan Kisan Sabha, and was a co-worker of Th. Desraj and the petitioner. There is no reason to disbelieve his statement. It is also proved from the evidence of Shri Hoti Lal R.1/W.8, who is a pleader, that at first the contesting respondent stood as an independent candidate; but even before he filed his nomination paper the workers and leaders of Kisan Sabha had been entreating him to stand on behalf of Kisan Sabha from Kumher Constituency. He has said that the Kisan Sabha and to entreat the contesting respondent because it was felt that no candidate could succeed against him. He has also said that after the contesting respondent was adopted by Kisan Sabha, Th. Desraj and the petitioner formed a separate group of Kisan Sabha, and Th. Desraj tried with all his might for his own election from Kumher Constituency, and the petitioner canvassed for Th. Desraj, in that Constituency. He has also said that even if the petitioner's nomination paper had been accepted, he would have withdrawn his candidature in favour of Th. Desraj, in case the latter's nomination paper was also accepted. It is also proved from his evidence as well as that of the contesting respondent that propaganda was carried on in support of the Congress candidate from that Constituency by the top leaders of the Congress Organisation, including the Prime Minister of India as well as his sister, Shrimati Vijaya Lakshmi Pandit. Propaganda was carried on in this Constituency by these important personalities in favour of Shri Raj Bahadur also, who is an important Congress man of Bharatpur, and was the then Deputy Minister of the Government of India, and had stood as a candidate for a seat in the House of the People from the constituency of which Kumher Constituency of Rajasthan Legislative Assembly formed a part. Propaganda was also carried on by Chobey Jugal Kishore, the then Minister of Rajasthan, Shri Amrit Lal Yadav, the then Deputy Minister of Rajasthan, and also among others by Master Adityendra, an important Congress leader of Rajasthan. It has also been proved by the evidence of the contesting respondent as well as admitted by the petitioner that the younger brother of the contesting respondent, Raja Girraj Saran Singh *alias* Bachchu Singh, contested the parliamentary seat from the constituency against Shri Raj Bahadur, and came out successful by a majority of about 20,000 votes. It is admitted by the petitioner himself in his statement under Order X, Rule 1, of the Code of Civil Procedure that the contesting respondent got 24,752 votes out of the total votes *viz.*, 32,690, polled. It is proved by the uncontradicted testimony of the contesting respondent, which could be easily contradicted by the electoral roll or by the evidence of the petitioner, but was not done, that the total number of votes in the constituency was approximately 44,000, and that out of it the Congress candidate, Shri Veerendra Singh, got only 5,845, and Thakur Desraj only 2,093 with the result that his security was forfeited. It is also proved by his uncontradicted evidence that Shri Raj Bahadur polled only about 5,000 votes for the parliamentary seat from the constituency, whereas his younger brother Raja Girraj Saran Singh polled 24,838 votes from the same constituency. It is admitted by the petitioner and also proved by the evidence of the contesting respondent that the contesting respondent is the younger brother of His Highness the Maharaja of Bharatpur, and the only reasons for the success of the contesting respondent given by the petitioner in his own statement are that there was a split in the Kisan Sabha, as a result of which it broke into two groups, and there was influence of

the contesting respondent's brother His Highness the Maharaja of Bharatpur. From this evidence, to our mind, the following facts are fully established:—

1. The petitioner and the respondent No. 3, Th. Desraj had both filed their nomination papers from Kumher Constituency on behalf of Kisan Sabha.

2. Of the two Kisan Sabha candidates, Th. Desraj was a more important personality and more important member of Kisan Sabha, and was one of its leaders.

3. Out of the two candidates who stood on behalf of Kisan Sabha from this constituency, it was settled that the petitioner would withdraw in favour of Th. Desraj in case the nomination papers of both were accepted.

4. Even after the acceptance of Kisan Sabha symbol by the contesting respondent, Th. Desraj contested the election with all his might, and the petitioner canvassed for him.

5. In spite of the vigorous propaganda of a well-organised party like the Congress, the contesting respondent's younger brother Raja Girraj Saran Singh won against Shri Raj Bahadur, an important leader of Congress and the then Communication Minister, by a majority of 24,838 votes to 5,000 votes.

6. There was a majority of Jat voters in Kumher constituency, and even the Congress thought it proper to put up to Jats as both its candidates, *viz.* Shri Veerendra Singh and Shri Jeewa Ram. The contesting respondent is not only a Jat but is a younger brother of His Highness the Maharaja of Bharatpur. The petitioner is not a Jat, and Thakur Desraj, who though a Jat, was badly defeated by the contesting respondent.

7. The petitioner, apart from his membership of Kisan Sabha, does not hold any position in the constituency in his individual capacity.

8. The Kisan Sabha had been wooing the contesting respondent from the very start, even before the nomination papers were filed, to stand as a candidate on behalf of Kisan Sabha, as in its opinion nobody else could succeed against the contesting respondent.

9. The contesting respondent secured 24,752 votes out of the total votes 32,690 polled, and 44,000 the total number of votes. Shri Veerendra Singh, who was a Congress candidate and was also a Jat, got only 5,845 votes, whereas respondent No. 3 Th. Desraj, also a Jat, got 2,093 votes only with the result that his security was forfeited.

Taking all the facts and circumstances enumerated above into consideration, it would not be unreasonable to hold that in the present case the initial presumption of the result of the election having been materially affected by the improper rejection of the nomination paper has been rebutted. In practice, circumstances stronger than those made out in this case can scarcely be conceived. It is certainly impossible to prove in such a case how many votes a rejected candidate would have got, if his nomination paper had not been rejected. To say, however, that in the absence of any such evidence the presumption cannot be rebutted by any circumstantial evidence howsoever strong will be a counsel of despair. According to the definition of "proved" in section 3 of the Indian Evidence Act, "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". It is difficult in human affairs to say anything with perfect certainty or with mathematical exactness. The evidence is to be viewed in the light of probabilities, and if the probabilities are so great that a prudent man ought, under the circumstances of the particular case, to act upon them, it cannot be said that the decision arrived at is simply on surmises and conjectures. It is not possible to get at direct evidence in every case, and the Court has to act upon circumstantial evidence in such cases, when direct evidence is impossible of procurement. Even in criminal cases conviction can be founded upon circumstantial evidence alone, although the standard of proof required in such cases is much higher than that in civil cases. An election case like the present is in the nature of a civil case, and we would not be unjustified if we examine the evidence in the manner it is done in civil cases. In a civil case a more preponderance of probability is a sufficient basis for decision. Wills in his Circumstantial Evidence, 7th Edition, page 8, says, "probability is the

term generally used to express the preponderance of the evidence or arguments, in favour of the existence or non-existence of a particular event or proposition; and sometimes as assertive of the abstract and intrinsic credibility of a fact or event." If, therefore, the circumstances established in this case can satisfy us as reasonable men that there was a preponderance of probability of the contesting respondent having been elected, even though the petitioner's nomination paper had not been rejected, we would be justified in holding that the result of the election has not been materially affected by the improper rejection of his nomination paper. The fact that out of the total votes of about 44,000, 32,690 votes were cast, that is 76 per cent. of the total votes, shows that here was a sufficiently heavy polling, and in a constituency like Kumher it would be extremely improbable, that polling would have been heavier simply by the addition of the petitioner in the arena. The contesting respondent secured about 75 per cent. of the votes polled and about 55 per cent. of the total votes. He, therefore, got the absolute majority by about 5 per cent. Even if we assume, for the sake of argument, that all the about 12,000 voters who did not exercise their franchise had come to the polling booth, if the petitioner were contesting, it is hardly probable that all those votes would have been cast in favour of the petitioner. But even if they were so cast, he would have got only 12,000 votes. If we assume that the votes which went in favour of Th. Desraj would all have come to the petitioner, if he were in the fight, he could have polled about 14,000 votes. It would be extremely absurd to hold that all the votes which were cast in favour of the Congress candidate, would have been transferred to the petitioner, had he been in the field. It is also extremely improbable that any substantial number of votes out of the votes cast in favour of the contesting respondent would have been transferred to the petitioner, in case he was allowed to contest the election. Of course, for argument's sake anything may be said. It might even be argued that all the votes which went in favour of the contesting respondent might have gone in favour of the petitioner, if he were contesting. But we as reasonable men have to see the probabilities considering the fact that the contesting respondent was a Jat candidate, and a very important Jat at that. His elder brother His Highness the Maharaja of Bharatpur had ruled the erstwhile Bharatpur State, of which Kumher constituency formed a part only till the other day. His youngest brother, Raja Girraj Saran Singh, could secure about 24,800 votes as against 5,000 votes of Shri Raj Bahadur, in spite of the propaganda of the eminent men like the Prime Minister of India, Shrimati Vijai Lakshmi Pandit, and other important Congress leaders and Ministers of Rajasthan. It is extremely improbable that the petitioner would have been able to get any noticeable number of votes out of the votes cast in favour of the contesting respondent. The petitioner was only a covering candidate for Th. Desraj, and the evidence of the Kisan Sabha leaders and office bearers examined in this case shows that it had been settled that the petitioner would withdraw in favour of Th. Desraj in case the nomination papers of the petitioner and Th. Desraj were accepted. The petitioner worked for Th. Desraj with all his might, with the result that Th. Desraj could secure only about 2,000 votes, and his security was forfeited. The probabilities are altogether against the petitioner's success in the election, even if he had remained in the field. In the case decided by the Bikaner Tribunal, quoted above, only some of the circumstances which exist in the present case were present, and the difference in the votes of the successful candidate and that of the defeated candidate was not as great as in the present case. Even then considering the number of votes obtained by the successful candidate in that case along with some other factors, not so strong as the circumstances in the present case, it was held that the presumption was rebutted. In the case of *Thakar Gokaldas Hirjee v. Zaveri Valabhdas Valji and others*, published in the *Gazette of India Extraordinary*, Part II—Section 3, No. 177, dated December 24, 1952, page 1043, the Election Tribunal, Saurashtra, considered the evidence produced in rebuttal of the presumption, though it considered it insufficient, because only 35 per cent. of the total votes were cast. The Tribunal, however, observed that if the successful candidate had been able to secure 51 per cent. of the total number of votes, it would have been possible to say with some certainty that the result of the election would not have been materially affected, if the petitioner had been allowed to contest, although it was further added that even in that case the petitioner might have argued that some of the votes cast in favour of the successful candidate might have gone in his favour, if he were to contest. The observation, however, shows that if the successful candidate had obtained 51 per cent. of the total number of votes, it would have been considered to be a very strong factor in favour of the successful candidate by that Tribunal. In the present case, as has been shown above, the contesting respondent got 5 times as many votes as the Congress candidate, and about 12 times as many votes as Th. Desraj. The contesting respondent got not only a majority of the votes polled, but an absolute majority of about 5 per cent. of the total number of votes. Could there be any possibility of the success of the petitioner, who is a non-Jat, in a constituency having the majority

of Jat voters, against a formidable Jat of the contesting respondent's position, who was constantly wooed even by the Kisan Sabha to accept its symbol so that it might flaunt its triumph. To our mind the probabilities of the petitioner's winning against the contesting respondent were almost nill, and we hold that by the improper rejection of the petitioner's nomination paper, the result of the election has not been materially affected.

Before parting with this issue, we may take note of one argument of the learned counsel for the petitioner, which appeared to us to be devoid of any force whatsoever, He argued that even if the petitioner might not have got more votes than the contesting respondent, it is possible that by his coming in, the other defeated candidates might have filched a large number of votes out of the votes cast in favour of the contesting respondent. We confess to say that we are unable to appreciate this argument. How could the coming in of the petitioner in the arena transfer any votes cast in favour of the contesting respondent to any of the two defeated candidates.

The issue is decided in favour of the contesting respondent and against the petitioner.

Issue No. 4.—It was argued by the learned counsel for the petitioner that the contesting respondent held an office of profit within the meaning of Article 191 of the Constitution of India, as he got monthly allowance from the Government. The only thing that he has been able to show is that the contesting respondent gets a monthly allowance and certain other easements on account of his being a member of the Raj family of Bharatpur. Reliance was placed on rule 241 of the Bharatpur State Civil Service Regulations, which were framed in the year 1934 during the minority administration of Bharatpur. It was contended by the learned counsel for the contesting respondent that they were not enforceable as it was only the ruler who could frame rules in respect of Khanpan etc. It was further argued that these rules, even if they had any force in Bharatpur State, ceased to have any effect after the merger of Bharatpur State first in the Matsya Union and thereafter in the present Rajasthan State. This is, however, a very controversial matter, and we need not go into it in this case, as to our mind even if the rules be taken to have the force of law and to be enforecable even after the merger of Bharatpur State in the bigger State of Rajasthan, there is nothing in them which shows that the contesting respondent, who is getting allowance by way of maintenance and has got a bungalow to live in and some other easements, was a holder of office under the erstwhile State of Bharatpur or thereafter under the Matsya, Rajasthan or Indian Government. Reliance was placed on the wordings of rule 241 that it is a recognised principle that the State had a right to exact service from all Khanpanis and allowance-holders. It may be that the State had a right to exact service from all Khanpanis, but the question is whether until any such services were given, they would be deemed to be holding an office under the Government. The liability to exact service is different from conferment of office. Until the office is conferred, it cannot be said that the person who has the liability to serve holds an "office". "Office" in the Law Lexicon of British India by P. Ramanatha Iyer, 1940 Edition, page 901, is defined as "that function by virtue whereof a man hath some employment in the affairs of another, as of the King, or of another person". Again it is said to be "the right to exercise a public or private employment, and take the fees and emoluments thereunto belonging, whether public, as those of magistrates, or private, as of bailiffs, receivers", etc. "Office" denotes a duty in the office-holder to be discharged by him as such. It consists in a right and corresponding duty, to execute a public or private duty and to take the emoluments belonging to it. In the Wharton's Law Lexicon, 13th Edition, page 608, "office" has been defined as "an employment, either judicial, municipal, civil, military, or ecclesiastical". Can it be said that the contesting respondent is holding any such office? Has the contesting respondent any function by virtue whereof he has some employment in the affairs of the State, or has he the right to exercise public or private employment? The reply to these is bound to be in the negative. We are, therefore, unable to hold that the contesting respondent held an office of profit under the Government of India or under the Government of Rajasthan at the time of filing his nomination paper. Of course, he gets a substantial allowance, and it may be said that he derives a profit from the Government, but mere getting allowance without holding any office does not disqualify a person to stand as a candidate for the Rajasthan Legislative Assembly, who is otherwise qualified to stand for it.

The answer to this issue is in favour of the contesting respondent and against the petitioner.

Issue No. 5.—In view of our finding on issue No. 4, it is not necessary to decide this issue.

The application, in our opinion, has no force, and must be dismissed. In view of the fact that our finding is that the nomination paper of the petitioner was improperly rejected, the parties shall bear their own costs.

K. K. SHARMA, *Chairman.*
A. N. KAUL, *Member.*
P. L. SHOME, *Member.*

[No. 19/207/52-Elec.III/5079.]

By Order.
P. R. KRISHNAMURTHY, Asstt. Secy.

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